20

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 78/2005

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Applicant (Defendant)	:	Smt. Uma Sen Gupta, W/o Late S.B. Sen Gupta, R/o Dave Building Motibagh Chowk, Raipur.
		Versus
Respondent (Plaintiff)	:	Mahesh Dawe, S/o Late Nawal Shankar Dawe, R/o Civil Lines, Mogibagh Chowk, Raipur, Tahsil & District Raipur (C.G.)

APPEAL UNDER SECTION 100 OF THE CIVIL PROCEDURE CODE

Present:
Shri Gautam Bhaduri, counsel for the appellant.
Shri A.K.Prasad, counsel for the respondent.

ORAL JUDGMENT
(Passed on this 30th day of April, 2007)

Heard the appellant's counsel on admission.

2. This appeal is directed against the judgment and decree dated 19.01.2005 passed by the Ist Additional District Judge, Raipur in Civil Appeal No 7-A/2002 affirming the judgment and decree dated 8.05.2001 passed in Civil Suit No.221-A/1998 by the Vth Civil Judge, Class-II granting eviction of the appellant herein under Section 12(1)(i) of the C.G. Accommodation Control Act (hereinafter referred to as the 'Act').

3. Brief facts are that the respondent/plaintiff instituted a Civil Suit No.221-A/1998 against the appellant herein for eviction on grounds of bonafide requirement for residence as also on the ground that the tenant

was in possession of an accommodation in Avanti Vihar, Raipur for her residence.

4. Learned Vth Civil Judge, Class-II, Raipur held that the plaintiff had failed to establish the ground of bonafide requirement of residence but granted a decree for eviction of the tenant only on the ground under Section 12(1)(i) of the Act. In First Appeal i.e. Civil Appeal No.7-A/2002, the judgment and decree for eviction under Section 12(1)(i) of the Act was affirmed. The evidence of the appellant/defendant as also her son T.K.Sen Gupta D.W.2 had revealed that S.B.Sen Gupta, husband of the appellant/defendant had constructed a spacious house in Avanti Vihar, Raipur which was available to the appellant/defendant for her residence.

5. Shri Gautam Bhaduri, learned counsel for the appellant submitted that during pendency of the first appeal, the application filed under Order 41 Rule 27 of C.P.C. for production of the Will executed by late Shri S.B. Sen Gupta i.e. husband of the appellant/defendant bequeathing the house at Avanti Vihar to his two sons, was rejected. His contention is that the Will had a material bearing on the facts of the case and would have shown that the appellant/defendant had no right to the house in Avanti Vihar, and therefore, the First Appellate Court ought to have allowed the application under Order 41 Rule 27 of C.P.C. No other point was urged by the learned counsel for the appellant who fairly conceded that if the document i.e. Will executed by S.B. Sen Gupta was not taken on record, the appellant had no case. Reliance was placed on ***Adil Jamshed Frenchman (D) by L.Rs. vs. Sardar Dastur School Trust and others;***

2005 AIR SCW 898, *Jaipur Development Authority vs. Smt. Kailashwati Devi;* AIR 1997 S.C. 3243, *B.R. Mehta vs. Smt. Atma Devi and others,* AIR 1987 S.C. 2220, *Hero Vinoth (Minor) vs. Seshammal,* AIR 2006 SC 2234.

6. In view of the submission made by the learned counsel for the appellant on admission, the only point that requires consideration is whether the First Appellate Court was justified in rejecting the application under Order 41 Rule 27 of C.P.C.

7. It is pertinent to note that T.K.Sen Gupta DW-2, son of the appellant/defendant had clearly admitted in his cross-examination that no document was inexistence which would show the entitlement of the two brothers to the house at Avanti Vihar, Raipur. The appellant/defendant DW-1 being the wife of late S.B.Sen Gupta also did not divulge any such fact either in her pleading or in her testimony that any Will had been executed by late S.B.Sen Gupta. If there was such a Will in existence, the appellant/defendant being the widow of S.B.Sen Gupta would have certainly known of it. It is also pertinent to note that the first page of the Will is not signed by anyone i.e. S.B. Sen Gupta or any witness. It is thus a highly suspicious document. Therefore, considering the admission made by T.K.Sen Gupta D.W-2, the First Appellate Court was wholly justified in rejecting the application under Order 41 Rule 27 of the C.P.C. The case law cited by the learned counsel for the appellant/defendant being clearly distinguishable on facts does not come to the aid of the appellant in the facts and circumstances mentioned above.

8. In this view of the matter, I am of the considered opinion that no substantial question of law arises for determination in this appeal. The appeal is therefore dismissed. Accordingly, M.C.P. No.227/2005 for stay also stands dismissed. There shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge